

here, therefore, is, not as to the power of the court, which is not denied, but whether the circumstances of this case are such as to justify its exercise.

In the case of *Tongue vs. Morton*, 6 Har. & Johns., 21, the Court of Appeals appear to consider the authority of the Court of Chancery to enforce its decrees, by directing the possession to be delivered to the purchaser, to be restricted to those cases, in which the persons holding the possession against the purchaser, are either parties to the proceedings, and whose rights are consequently determined by the decree, or persons who come into possession *pendente lite*, claiming title under the parties to the bill, or some of them. It is true, the court in that case, speaking of the title of *Tongue*, the party in possession, say that he was not only in possession at the time the original petition was filed, but that he claimed adversely to the will of Westency, under which the property was sold; but it appears to me, that the court did not mean to be understood as deciding, that an adverse claim was necessary to protect him from being dispossessed, in that form of proceeding. On the contrary, I understand the decision to mean, that the power in question, that is, the authority of the Court of Chancery, to turn a party out of possession, without an adjudication upon his title in the usual course of judicial proceeding, extends only to those cases in which the party in possession came in *pendente lite*, claiming title to the property under the parties to the bill, or some of them, in which case they occupy the position of those whom they represent. But where the party who is in possession, acquired his title prior to the institution of the proceedings in which the decree passed, it would seem irregular, and in conflict with the views of the Court of Appeals in the case referred to, to investigate and pass judgment upon it, in a summary manner, by way of motion.

The case of *Frazier vs. Palmer*, 2 Har. & Gill, 469, so far as the circumstances are alike, is in confirmation of this view.

But it is said, that the party in possession in this case, is a mere occupying tenant, claiming possession under the party,